**IN THE HIGH COURT OF GUJARAT AT AHMEDABAD**

**CRIMINAL CASE No. 3 of 2007**
**In**
**COMPANY PETITION No. 215 of 1997**

**For Approval and Signature:**

**HONOURABLE MR.JUSTICE K.A.PUJ**

==========

| | |
|---|---|
| 1 | Whether Reporters of Local Papers may be allowed to see the judgment ? |
| 2 | To be referred to the Reporter or not ? |
| 3 | Whether their Lordships wish to see the fair copy of the judgment ? |
| 4 | Whether this case involves a substantial question of law as to the interpretation of the constitution of India, 1950 or any order made thereunder ? |
| 5 | Whether it is to be circulated to the civil judge ? |

==========

**O.L. OF M/S. ANAL POLYESTERS LVT. LTD. - Complainant(s)**
**Versus**
**SHRI KANUBHAI LALBHAI DESAI & 3 - Accused**

==========

**Appearance :**
OFFICIAL LIQUIDATOR for Complainant(s) : 1,MR.HIREN M MODI for Complainant(s) : 1,
MR PAVAN S GODIAWALA for Accused : 1 - 3.
None for Accused : 4,

==========

**CORAM : HONOURABLE MR.JUSTICE K.A.PUJ**

**Date : 24/12/2007**

**ORAL JUDGMENT**

1. The Official Liquidator has filed this

Criminal Case against accused Nos.1 to 4 requesting this Court to take cognizance of the default committed under Section 454(5) of the Companies Act, 1956 and to issue process against accused Nos.1 to 4 to try and to punish them in accordance with the provision of law and in view of the facts stated in para-6 of the Criminal Case.

2. The Official Liquidator has further sought the direction to the accused No.1 to 4 to submit forthwith the Statement of Affairs to him as on the date of winding up order dated 12.1.2005 with full details. He has also prayed for the direction to the accused Nos.1 to 4 to attend his office for the purpose of recording of their statement under Rule 130 of the Companies (Court) Rules, 1959.

3. It is the case of the Official Liquidator in the complaint that this Court has passed an order of winding up on 12.1.2005 in

Company Petition No.215 of 1997 and he was appointed as Liquidator of the Company. According to the Official Liquidator, accused Nos.1 to 4 were the Directors of the Company as on the relevant date of his appointment as Liquidator on the date of winding up order. Therefore, as per provisions contained under Section 454 of the Act the Ex-directors were required and legally bound to file with him the Statement of Affairs of the Company within 21 days from the date of winding up order. He has issued notice to the accused Nos.1 to 4 on 9.2.2005. Despite this notice, Statement of Affairs was not filed by the accused and hence he has filed the Criminal Case No.3 of 2007 against the accused Nos.1 to 4.

4. This Court has issued process on 23.3.2007. Pursuant to the process, Mr. Pavan Godiawala, learned advocate appeared on behalf of accused Nos.1 to 3. Mr. A.R.

Gupta, learned advocate appeared for accused No.4. All the accused personally remained present before the Court on 23.4.2007.

5. Affidavits are filed by all the four accused separately on 27.4.2007. Based on these affidavits, Mr. Godiawala has submitted that accused Nos.1 and 4 have resigned from the post of Director with effect from 2.3.1998 and 30.10.1997 respectively. He has pointed out that the Official Liquidator has himself attached alongwith the complaint at Annexure-B a letter dated 21.2.2005 which indicates that the accused Nos.1 and 4 ceased to be a director of the Company with effect from 2.3.1998 and 30.10.1997 respectively. Despite this fact, the Official Liquidator has made statement in the complaint completely contradictory to the documents placed by him and dragged the accused Nos.1 and 4 in the present proceeding and they have therefore, raised very serious objection

against the present complaint.

6. As far as accused Nos.2 and 3 are concerned, Mr. Godiawala has submitted that the Company in liquidation has stopped its production in the year 2000 due to disconnection of the power. The GIDC has taken possession of the Unit in the year 2001 for non-payment of the dues. One Devendra Kumar Yadav was looking after day-to-day affairs after 1999 and was entrusted with substantial powers to look after day-to-day affairs. He has further submitted that after taking over the possession, the GIDC has kept its own security. The Official Liquidator has taken possession of the unit by breaking all the locks of the unit and taken inventory. The The ex-management was not in possession of the Unit and more importantly the business was stopped for the last many years. The accused were not in possession of the Books of Account and they did not have

any access to the record to enable them to file Statement of Affairs. It is only because of this reason, Statement of Affairs could not be filed in time. He has, therefore, submitted that non filing of Statement of Affairs is neither intentional nor willful and hence the prosecution initiated against the accused is not tenable in the eye of law.

7. After filing the aforesaid reply by all the four accused, the order was sought from this Court for taking inspection of the Books of Account and after taking the inspection, the Statement of Affairs was filed on 29.6.2007. Even statement of accused No.1 was recorded under Section 130 on 19.12.2007. The queries raised by the Official Liquidator in the Statement of Affairs were also satisfied. Since all the formalities are over Mr. Godiawala has submitted that so far as accused Nos.1 and 4 are concerned, they are

straightway required to be discharged and he has requested the Court to make certain observation against the Official Liquidator to the effect that the Criminal Case should not have been filed against the Ex-directors of the Company without verifying the record from the ROC. So far as accused Nos.2 and 3 are concerned, since they have been prevented by reasonable cause from filing the Statement of Affairs in time, a lenient view should be taken in their case.

8. Mr. Hiren Modi, learned advocate appearing for the Official Liquidator has submitted that the Statement of Affairs, though filed, was late by two and half years and hence it is in violation of the provision contained in Section 454 of the Companies Act, 1956 and hence order of sentence may be passed against accused Nos.2 and 3 and they may be made liable to pay fine for the delay caused in filing the Statement of Affairs.

9. Having heard learned advocates appearing for the respective parties and having considered the complaint, documents attached therewith and the affidavit-in-reply filed by all the four accused, the Court is of the view that accused Nos.1 and 4 have wrongly been impleaded as accused in the present complaint. They have resigned from the directorship of the Company much before the winding up order was passed. Even the information which the Official Liquidator had received for from the Registrar of Companies clearly reveals that accused Nos.1 and 4 have resigned much before the date of winding up order. Despite this fact, they have been impleaded as Directors of the Company. It appears that the Official Liquidator has not applied his mind to this information and in mechanical manner they have been impleaded as accused in this complaint. The Criminal Case is a very serious matter and due care should

have been taken by him before filing the Criminal Case. Earlier also this Court has made certain observations in its order in Criminal Case No.8 of 2002 decided on 31.1.2003. It appears that the Liquidator has not taken any serious note of those observations made by this Court from time to time. The Court, therefore, once again observes with pain that the Official Liquidator should take special care while filing Criminal Complaint for the alleged offence of non filing of the Statement of Affairs by the Ex-directors of the Company and if they are not the Directors on the date of winding up order and/or appointment of the Provisional Liquidator, straightway, Criminal Case should not have been filed against them. If they are really involved, then special material should have been brought on record by the Official Liquidator and then only the Criminal Case should be filed against them. The accused Nos.1 and 4, therefore, deserve

acquitted from the present proceeding and they are accordingly acquitted from this Criminal Case.

10. So far as accused Nos.2 and 3 are concerned, the Court is of the view that since the possession of the assets of the Company in liquidation was taken by GIDC and they did not have any access to Books of Account of the Company when the winding up order was passed by the Court, they could not file Statement of Affairs in time. It is true that they could have taken inspection earlier and prepared the Statement of Affairs which was done subsequently and after taking the inspection from GIDC Statement of Affairs was filed on 29.6.2007. Thus, there is delay of about two and half years but that delay has been properly explained and hence the Court takes lenient view in the matter and accordingly accused Nos.2 and 3 are imposed with fine and directed to pay fine of

Rs.2500/- each to the Official Liquidator. In any case they are not required to undergo any sentence for the default said to have been committed under Section 454 of the Companies Act, 1956.

11. In the above view of the matter, accused Nos.2 and 3 are hereby directed to pay fine of Rs.2500/- each to the Official Liquidator within four weeks from today and on that ground both of them are discharged from the criminal proceeding. This Criminal Complaint is accordingly disposed off.

(K. A. PUJ, J.)

kks